

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:07CV151

DR. BARRY L. LaVIGNE, D.C.,

Plaintiff,

Vs.

UNITED STATES GOVERNMENT,

Defendant.

)
)
)
)
)
)
)
)
)
)

ORDER OF DISMISSAL

THIS MATTER is before the Court on the Plaintiff's proposed complaint and his application to proceed in this action without the prepayment of the required filing fees. The undersigned grants the application¹ but *sua sponte* dismisses the action pursuant to 28 U.S.C. § 1915(e)(2).

That statute provides, in pertinent part, that “[n]otwithstanding any filing fee, or any portion thereof, that may have been paid, the court *shall*

¹It is at least arguable that the application should not be granted because the Plaintiff discloses that he owns real estate worth \$25,000. However, although the Plaintiff's handwriting is illegible, he appears to claim that there is a tax lien against the property in an amount which exceeds its value. As a result, the application is granted.

dismiss the case at any time if the court determines that . . . the action . . . is frivolous or malicious [or] fails to state a claim on which relief may be granted[.]” **28 U.S.C. § 1915(e)(2) (emphasis added)**. Under this statutory proscription, the district court must dismiss such a case and it is the intent of Congress that such dismissals occur prior to service of the complaint on defendants. ***Cochran v. Morris*, 73 F.3d 1310, 1315 (4th Cir. 1996); *White v. White*, 886 F.2d 721 (4th Cir. 1989)**. “Legally frivolous claims are based on an ‘indisputably meritless legal theory’ and include ‘claims of infringement of a legal interest which clearly does not exist.’” ***Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994)**.

This standard encompasses complaints that are either legally or factually baseless. The statutory language dictates a high degree of deference to the discretion of district courts. A claim can be dismissed whenever a district court is “satisfied” the claim is frivolous. Moreover, the term frivolousness itself contemplates deference because “as a practical matter, it is simply not susceptible to categorical definition.”

***Cochran, supra*, at 1316 (quoting *Adams, supra*, at 74).**

In the proposed complaint, the Plaintiff argues that the laws against polygamy violate his constitutional rights because, “It is my religious belief that a person can marry whoever or whomever they choose, including their pet.” **Complaint, filed April 20, 2007**. He also claims that because of

such laws, he “lost a wife and became destitute.” *Id.* The Court finds the complaint is frivolous and should be dismissed.

IT IS, THEREFORE, ORDERED that the application to proceed without the prepayment of fees is hereby **GRANTED**.

IT IS FURTHER ORDERED that the complaint is hereby **DISMISSED WITH PREJUDICE**.

Signed: April 26, 2007

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

